

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 1284 of 1996

to

FIRST APPEAL No 1297 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE J.N.BHATT

and

Hon'ble MR.JUSTICE M.H.KADRI

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

STATE OF GUJARAT

Versus

RAGAVJIBHAI DEVSHIBHAI

Appearance:

MR PG DESAI, GOVERNMENT PLEADER for Appellant.

MR GAURANG H BHATT for Respondents.

CORAM : MR.JUSTICE J.N.BHATT and

MR.JUSTICE M.H.KADRI

Date of decision: 13/03/97

Appellant - State of Gujarat - has filed this group of First Appeals under S. 54 of the Land Acquisition Act, 1894 (for short 'the Act') read with S.96 of the Code of Civil Procedure, challenging the common judgment and award dated January 27, 1995, passed by the learned 2nd Extra Assistant Judge, Rajkot District at Gondal in Land Acquisition Cases No. 197/89 to 208/89, 668/89 and 669/89.

2. Few facts leading to filing of this group of first appeals may be summarised as under:

Lands of the respondents-claimants at Village Navi Mengani were acquired for the public purpose of 'Motisar Irrigation Scheme'. Notification under S.4(1) of the Act was published in Government Gazette on 8.9.1987. After following necessary procedure prescribed under the Act, Land Acquisition Officer declared common award on 15.12.1988 in respect of the lands acquired of the claimants. By the said award, the Land Acquisition Officer awarded to the claimants Rs.180/- per Are as compensation for the acquired lands. The claimants being dissatisfied with the award preferred applications for reference to the District Court, under S.18 of the Act. Said applications were numbered as Land Acquisition Cases No. 197/89 to 208/89, 668/89 and 669/89. The above land references were transferred to the court of the learned 2nd Extra Assistant Judge, Rajkot District at Gondal. The same were consolidated and the claimants led evidence in LAC No. 205/89. Learned 2nd Extra Assistant Judge, after appreciating oral as well as documentary evidence, determined the market price of the acquired lands at the rate of Rs.300/- per Are. The reference Court also awarded compensation for the wells situated on the acquired lands at Rs.5,000/- per well. Being aggrieved by the judgment and award of the reference Court, State of Gujarat has preferred these first appeals. As common questions of law and facts arise in all these 14 appeals, they are disposed of by this common judgment.

3. Before the reference Court, the claimants relied on registered sale deed Ex.17 dated 25.4.1985 with regard to sale of land situated on the sim of Village Patiyali. Owner of the land under sale deed was examined before the court and he deposed that the lands under acquisition and the lands under the sale deed were situated nearby and were having the same potentiality. Sale Deed Ex.17 which came to be executed in the year 1985 was in respect of Survey No.123 of Village Patiyali, and the lands under

sale were sold at the rate of Rs.250/- per Are. It is pertinent to note that sale deed Ex.17 was executed in the year 1985, whereas in the present case the Notification was issued on 8.9.1987, i.e. after lapse of a period of more than 2 years. In our opinion, the reference Court was justified in relying on the sale deed Ex.17 in determining the market price of the acquired lands. We are of the opinion that the market price assessed by the reference Court at Rs.300/- per Are is just and adequate, looking to the facts and circumstances of this case and it cannot be said to be excessive or unreasonable. Therefore, the award of the reference Court is required to be upheld with regard to market price fixed for the acquired lands at the rate of Rs.300/- per Are.

4. Learned Govt. Pleader Mr.P.G.Desai has submitted that the award so far as it relates to compensation for wells situated on the acquired lands which are the subject matter of First Appeals No. 1284, 1286, 1287, 1288, 1289 and 1294 of 1996, is illegal and erroneous in view of the judgment of the Apex Court in the case of O.JANARDHAN REDDY AND OTHERS vs. SPL. DY. COLLECTOR, L.A. UNIT-IV, LMD, KARIMNAGAR, A.P. AND OTHERS, AIR 1995, SC, 196. The apex court in the above decision has held that when market price of the lands under acquisition is fixed taking the lands as irrigated lands, no separate compensation for wells situated on the lands can be awarded. In the present case, the market price of the lands was assessed as 'bhagayat' lands (irrigated lands). Therefore, as per the principle laid down in O.JANARDHAN REDDY's case (supra), the claimants are not entitled to claim separate compensation for the wells situated on their acquired lands. The submission of the learned G.P. that the respondents-claimants are not entitled to claim compensation for the wells, deserves to be accepted. Each respondent of First Appeals No. 1286 to 1289 and 1294/96 was awarded Rs.5,000/- as compensation for the well situated on his lands, whereas respondent of F.A.No. 1284/96 was awarded Rs.15,000/- as compensation for the three wells situated on the acquired lands. Therefore, the awards in First Appeals No. 1284, 1286 to 1289 and 1294/96 deserve to be partly modified as the claimants-respondents are not entitled to claim compensation for the wells situated on their lands. The reference court has also awarded compensation to the respondents-claimants for the house, machine room, pipeline, kundis and other sundry items, which is not challenged by the appellant in this group of first appeals. Therefore, the compensation awarded to the respondents-claimants for those items deserves to be

upheld. Accordingly, except the amount in respect of compensation for the wells situated on the acquired lands, the award of the reference court is upheld.

5. As a result of the foregoing discussion, First Appeals No. 1284, 1286 to 1289 and 1294 of 1996 are partly allowed. Compensation in respect of wells situated on the lands of the respondents in the said appeals is disallowed. The impugned award is modified to that extent.

First Appeals No. 1285, 1290, 1291, 1292, 1293, 1295, 1296 and 1297 of 1996 are dismissed.

In the facts and circumstances of the case, parties are directed to bear their own costs.

(abraham)